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No. 94-978

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1994

JOSLYN MANUFACTURING COMPANY,
Petitioner,

vs.

LIBERTY MUTUAL INSURANCE COMPANY,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

AMICUS CURIAE BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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INTEREST OF THE AMICUS CURIAE

The Attorney General of the State of Louisiana ("Attorney General") is the chief legal officer of the State and is responsible for protecting the rights and interests of the State and its citizens. The ruling of the United States Fifth Circuit Court of Appeals in this case conflicts with long-standing Louisiana law and encroaches on public policy matters of substantial importance to the State of Louisiana.

Therefore, the Attorney General has an interest in the outcome of this case.

The Attorney General respectfully submits this brief in support of the Petition for Writ of Certiorari filed by Joslyn Manufacturing Company ("Joslyn").

SUMMARY OF ARGUMENT

The Fifth Circuit violated the Erie doctrine by considering this case under a "condition precedent" analysis which has been rejected by the Louisiana Supreme Court. Further, the ruling of the Fifth Circuit encroaches on public policy matters of substantial importance to the State of Louisiana.

Therefore, this Court should grant Joslyn's Petition for Writ of Certiorari, vacate the ruling of the Fifth Circuit, and remand this case for reconsideration of Joslyn's motion to certify the question presented herein to the Louisiana Supreme Court.

ARGUMENT

In the proceedings below, the Fifth Circuit held that, under Louisiana law, a liability insurance company can avoid coverage based on the insured's delay in giving notice of a claim even though the delay caused no harm to the insurer. This decision is in conflict with the law given by Louisiana courts. For reasons set forth below, the Attorney General submits that the question presented herein should have been certified to the Louisiana Supreme Court.

I. The Fifth Circuit Violated the Erie Doctrine By Failing to Apply Louisiana Law.

The Fifth Circuit violated the Erie doctrine by deciding this case under a "condition precedent" analysis which has been rejected by the Louisiana Supreme Court. Erie R. Co. v. Tompkins, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed 1188 (1938); Guaranty Trust Co. v. York, 326 U.S.

99, 65 S.Ct. 1464, 89 L.Ed. 2079 (1945); Jackson v. State Farm Mut. Auto. Ins. Co., 211 La. 19, 29 So.2d 177 (1946).

In Jackson v. State Farm Mut. Auto Ins. Co., the Louisiana Supreme Court rejected the "condition precedent" analysis and clearly established that in each case involving delayed notice the court should consider what prejudice to the insurance company's defense has been caused by the delay. The prejudice rule provided in Jackson is the long-standing law of Louisiana and has been applied extensively by Louisiana courts.[1]

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[1] Trosclair v. CNA, 637 So.2d 1168, 1170 (La. App. 4th Cir. 1994); Rovira v. LaGoDa, Inc., 551 So.2d 790, 794 (La. App. 5th Cir. 1989); Gulley & Associates v. Wausau Insurance Co., 536 So.2d 816, 818 (La. App. 1st Cir. 1988); Champion v. Panel ERA Manufacturing Co., 410 So.2d 1230, 1236 (La. App. 3rd Cir. 1982); Fakouri v. INA, 378 So.2d 1083, 1086 (La. App. 3rd Cir. 1979);

Under the Erie doctrine, the Fifth Circuit is bound by the substantive law of Louisiana and should have applied the prejudice requirement established in Jackson v. State Farm Mutual Auto. Insurance Company.

Moskau v. Insurance Co. of North America, 366 So.2d 1004, 1006 (La. App. 1st Cir. 1978); Kinchen v. Dixie Auto Insurance Co., 343 So.2d 263, 265 (La. App. 1st Cir. 1977); Barnes v. Lumberman's Mutual Casualty Co., 308 So.2d 326, 328 (La. App. 1st Cir. 1975); Davis v. Allstate Insurance Co., 272 So.2d 458, 462 (La. App. 2nd Cir. 1973); Heimbaugh v. Federal Insurance Co., 281 So.2d 839, 845-846 (La. App. 1st Cir. 1973); Branzaru v. Miller's Mutual Ins. Co., 252 So.2d 769 (La. App. 1st Cir. 1971); Miller v. Marcantel, 221 So.2d 557, 560 (La. App. 3rd Cir. 1969); Reagan v. Mid-Continent Underwriters, Inc., 150 So.2d 75, 79 (La. App. 4th Cir. 1963); Hayward v. Carolina Insurance Co., 51 So.2d 405, 407 (La. App. 1st Cir. 1951); Reid v. Monticello, 44 So.2d 509, 512 (La. App. 1st Cir. 1950).

II. The Question Presented Herein Should Be Certified to the Louisiana Supreme Court Because the Fifth Circuit's Ruling Encroaches on Public Policy Matters of Substantial State Import.

Under Erie, the Louisiana Supreme Court has the prerogative to change Louisiana law, not the Fifth Circuit. The Fifth Circuit's usurpation of this right encroaches on public policy matters of substantial importance to the State of Louisiana.

A. The State of Louisiana has a substantial interest in maintaining insurance coverage for environmental contamination of State resources.

The ruling of the Fifth Circuit will allow insurers to avoid coverage for environmental contamination in Louisiana based on hypertechnical grounds. Several hundred abandoned hazardous waste sites exist in Louisiana, many of which were owned or operated by

persons or entities which cannot pay the costs of remedying the environmental damage on their property. Because remediation costs are often extremely high and the State has only limited funds available to do this work, liability insurance is often critical to the clean-up of hazardous waste sites in Louisiana.

Therefore, the State of Louisiana has a strong interest in maintaining insurance coverage for environmental contamination of its natural resources and insurers should not be allowed to avoid such coverage based on mere technicalities which cause them no harm.

B. The State of Louisiana has a substantial interest in protecting investments by its citizens in policies of insurance.

The ruling of the Fifth Circuit will allow insurers to unfairly deprive Louisiana citizens of their investments in

liability insurance policies. Insurers who have collected high-cost policy premiums from Louisiana citizens for many years will be able to avoid coverage on policies based on a mere delay in notice which caused no harm to the insurer. Insurers should not be allowed to receive a windfall on the policies at the expense of Louisiana citizens.

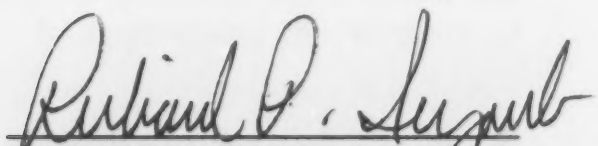
C. The State of Louisiana has a substantial interest in maintaining the integrity of its courts.

The Fifth Circuit's failure to follow Louisiana law undermines the integrity of Louisiana courts. Many insurers who provide liability coverage in Louisiana are not domiciled in this State; therefore, suits filed by Louisiana citizens against their insurers will often be subject to removal to federal court. Federal courts will become a

convenient forum for insurers to avoid Louisiana's long-standing prejudice requirement if the Fifth Circuit decision stands.

III. Conclusion

The Attorney General respectfully requests that this Court grant Joslyn's Petition for Writ of Certiorari, vacate the ruling of the United States Court of Appeals for the Fifth Circuit, and remand this case for reconsideration of Joslyn's motion to certify the question presented herein to the Louisiana Supreme Court.



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